

REMARKS

Claims 1-18 are pending in the Application. Claim 1 is an independent claim and claims 2-5 and 16 depend therefrom. Claim 6 is an independent claim and claims 7-10 and 17 depend therefrom. Claim 11 is an independent claim and claims 12-15 and 18 depend therefrom. The Applicant respectfully requests that the application be reconsidered in view of the following remarks.

Rejections Under 35 U.S.C. §103(a) – Oh in view of Chen (Claims 1, 4-6, 9-11 & 14-18)

In point 3 on pages 2-7 of the non-final Office Action, independent claims 1, 6 and 11 and dependent claims 4-5, 9-10 and 14-18 were rejected under 35 U.S.C. §103(a) as being unpatentable over Oh et al (U.S. Patent No. 5,781,696, hereinafter “Oh”), in view of Chen, et al (U.S. Patent No. 6,915,263, hereinafter “Chen”). The Applicant respectfully traverses the rejections for at least the following reasons.

In order for a *prima facie* case of obviousness to be established, the Manual of Patent Examining Procedure, Rev. 6, Sep. 2007 (“MPEP”) states the following:

The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 (2007) noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Federal Circuit has stated that “rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.”

See the MPEP at § 2142, citing *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006), and *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d at 1396 (quoting Federal Circuit statement with approval). Further, MPEP § 2143.01 states that “the mere fact that references can be combined or modified does not render the resultant combination obvious

unless the results would have been predictable to one of ordinary skill in the art” (citing *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 (2007)). Additionally, if a *prima facie* case of obviousness is not established, the Applicant is under no obligation to submit evidence of nonobviousness:

The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.

See MPEP at § 2142.

Regarding claims 1 and 6, the Applicant respectfully submits that the combination of Oh and Chen fails to teach, suggest, or disclose, for example, “applying a window function to the remaining frames,” as set forth in Applicant’s independent claims 1 and 6. With regard to claim 11, the Applicant respectfully submits that the combination of Oh and Chen fails to teach, suggest, or disclose, for example, “the at least one controller configured to apply a window function to the remaining frames,” as set forth in Applicant’s amended, independent claim 11.

The Applicant appreciates the Examiner’s acknowledgement that Oh fails to teach “apply[ing] a window function to the remaining claims,” as set forth in Applicant’s independent claims 1, 6 and 11. However, the non-final Office Action alleges that Chen’s Column 9, Lines 9-38 teaches the above-mentioned claim limitation. The Applicant respectfully submits that the Office Action mischaracterizes Chen and the Applicant’s independent claims. Specifically, Chen discloses “an audio decoder unit that merges nearby muted (“error”) frames to extend a silence period between the error frames when the error rate is high” because “when many error frames are detected in the same bitstream neighborhood, these intermittent durations of silence (mutes) followed by sound (unmute) and silence again (mute) can be very unappealing to the ear and annoying and can also damage speaker systems.” (Chen, Column 2, Lines 54-57 and 19-24).

To do this, Chen discloses receiving a current frame; determining whether a first error sum is greater than zero for the current frame; if the first error sum is not greater than zero, performing a normal decode of the current frame; if the first error sum is greater than zero, determining whether a second error sum is greater than a tolerance value; if the second error sum

is less than the tolerance value, performing a normal decode of the current frame; and **if the second error sum is greater than the tolerance level, muting the current frame by, for example, “apply[ing] a soft mute to the current frame” or applying a frame repeat process.** (Chen, Figure 4 and Column 7, Line 9 through Column 10, Line 26 (emphasis added)). With regard to applying a soft mute to the current frame, Chen discloses “an attenuation function or ‘window’ was applied to the error frame to soften the mute.” (Chen, Column 2, Lines 14-15 (emphasis added)). Chen further discloses “a number of different muting operations can be performed **to mute the current frame**. In the preferred embodiment, a smooth muting with zeros can be applied to decline the audio signal at a given rate according to a window function....” (Chen, Column 9, Lines 23-27 (emphasis added)). The Applicant further notes that Chen’s Figure 6 “illustrates an audio signal in accordance with a muted audio frame and a smoothing window function applied thereto.” (Chen, Column 4, Lines 50-52 (emphasis added)).

The Applicant notes that as disclosed by Chen, “if the second error summation is greater than the tolerance, then the current frame is skipped and the output is muted....” (Chen, Column 9, Lines 9-11 (emphasis added)). In other words, Chen teaches applying an attenuation or window function to the skipped frame to apply a soft mute to the frame. Because Chen teaches applying a window function to skipped frames, Chen clearly fails to teach “applying a window function to the remaining frames,” as set forth in Applicant’s independent claims 1 and 6, and “the at least one controller configured to apply a window function to the remaining frames,” as set forth in Applicant’s independent claim 11. Thus, the combination of Oh and Chen fail to disclose “apply[ing] a window function to the remaining frames,” as set forth in Applicant’s independent claims 1, 6 and 11.

Therefore, for at least the above stated reasons, Applicant respectfully submits that the combination of Oh and Chen fails to teach, suggest, or disclose Applicant’s invention as set forth in claims 1, 6 and 11. The Applicant believes that claims 1, 6 and 11 are allowable over the combination of Oh and Chen. Applicant respectfully submits that claims 1, 6 and 11 are independent claims, and that claims 2-5 and 16, 7-10 and 17, and 12-15 and 18 depend either

directly or indirectly from independent claims 1, 6 and 11, respectively. Because claims 2-5 and 16, 7-10 and 17, and 12-15 and 18 depend from claims 1, 6 and 11, respectively, Applicant respectfully submits that claims 2-5, 7-10 and 12-18 are allowable over the combination of Oh and Chen, as well. The Applicant further submits that each of claims 2-5, 7-10 and 12-18 is independently allowable. The Applicant respectfully requests, therefore, that the rejection of claims 1, 4-6, 9-11 and 14-18 under U.S.C. §103(a), be withdrawn.

Rejections Under 35 U.S.C. §103(a) – Oh, Chen and Kizuki (Claims 2-3, 7-8 & 12-13)

In Point 4 on Pages 7-10 of the non-final Office Action, claims 2-3, 7-8 and 12-13 were rejected under 35 U.S.C. §103(a) as being unpatentable over Oh in view of Chen and further in view of Kizuki et al (U.S. Patent No. 5,684,829, hereinafter “Kizuki”). The Applicant respectfully submits that claims 2-3, 7-8 and 12-13 depend either directly or indirectly from independent claims 1, 6 and 11, respectively. Applicant believes that claims 1, 6 and 11 are allowable over the proposed combination of references, in that Kizuki fails to overcome the deficiencies of Oh in view of Chen, as set forth above. Because claims 2-3, 7-8 and 12-13 depend from independent claims 1, 6 and 11, respectively, Applicant respectfully submits that claims 2-3, 7-8 and 12-13 are allowable over the proposed combination of Oh in view of Chen and further in view of Kizuki, as well. Applicant also asserts that each of claims 2-3, 7-8 and 12-13 is independently allowable. Therefore, for at least the reasons set forth above, Applicant respectfully requests that the rejections of claims 2-3, 7-8 and 12-13 under 35 U.S.C. §103(a) be withdrawn.

Final Matters

The Office Action makes various statements regarding former claims 1-18, 35 U.S.C. § 103(a), the Oh reference, the Chen reference, the Kizuki reference, one skilled in the art, etc. that are now moot in view of the previously presented amendments and/or arguments. Thus, the

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Applicants will not address all of such statements at the present time. However, the Applicants expressly reserve the right to challenge such statements in the future should the need arise (e.g., if such statements should become relevant by appearing in a rejection of any current or future claim).

Applicant reserves the right to argue additional reasons supporting the allowability of claims 1-18 should the need arise in the future.

CONCLUSION

Applicant respectfully submits that claims 1-18 are in condition for allowance, and requests that the application be passed to issue.

Should anything remain in order to place the present application in condition for allowance, the Examiner is kindly invited to contact the undersigned at the telephone number listed below.

Please charge any required fees not paid herewith or credit any overpayment to the Deposit Account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

Date: March 27, 2008

Respectfully submitted,

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